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NEW METHODS TO OVERCOME ZONING RESTRICTIONS AGAINST TRANSPORTABLE HOUSING

by

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In a country which has just come through a period of abnormally low housing production and now faces the pressures of housing demand by returning Viet Nam veterans, solutions on how to increase the housing supply must be immediate and practical. These solutions must be in the form of low-cost, decent housing in areas of moderate to intense urban settlements and not on the rural fringes away from job opportunities and social contacts. Americans have prided themselves in their ability to overcome extreme crises; housing needs and goals are just such a test of that know-how and ability. (1)

Getting lower-cost housing into urban areas regulated by zoning controls is the most difficult problem facing industrialized housing manufacturers today. Only in the rare exceptions of federally-assisted "demonstration" or model projects are developers and manufacturers able to achieve any breakthroughs. Yet, it is undisputed that lower-cost manufactured housing is available and marketable by the mobile home industry, (2) and may be one answer to urban development on non-tract, scattered residential lots.

What, then, can be done to open urbanized communities? The answer will be sought within the explicit and subtle forms of exclusion by zoning ordinance definition and case law interpretation of dwelling. The outcome of such explorations will be in the form of recommended ordinance changes. The mobile home zoning cases contain the best directly comparable legal arguments which provide an analytical comparative basis for predicting resistance to transportable manufactured dwellings. It is assumed throughout that the existing mobile home industry, as experienced manufacturers of modular dwellings, is the only group available to immediately meet a significant segment of lower-cost housing demand, (3) and that the group can adjust their production methods to comply with the high performance standard manufactured-home building codes. (4) It is beyond the scope of this paper to explore the problems of complying with traditional specification building codes, which have formed the second barrier to transportable housing within developed areas.

FUNCTION OF HOUSING REGULATION: Generally

Zoning ordinances as we know them today have their antecedents in municipal recognition that gunpowder mills, storehouses, and wooden buildings should be prohibited from heavily populated areas. As the evils of high density development and occupancy manifested themselves in the 19th and early 20th centuries, urban tenement district ordinances began to reflect the desirability of requiring open space, air, light and ventilation around each and every habited building for health and safety reasons. Thusly, municipal land uses are regulated under the broad legal warrant of protecting health, safety and general welfare, by controlling height, bulk and lot area and yards for the structure (insuring separations against fire and providing child play areas); limiting levels of noise, glare, odor and pollution; restricting street congestion (off-street garages and parking lots); requiring installation or connection to adequate utility services; and segregating incompatible physical uses and future developments (to preserve existing property values). These have been deemed to be valid police power acts by court decisions too numerous to recount. What such regulations do not speak to are the methods, materials and costs of construction; nor do they address themselves to the precise uses an apparently conforming structure may be designed to provide. The zoning of districts for "compatible" uses has produced the crazy-quilt pattern so familiar in every city; a pattern that reflects the battle between vested land-owner interests and the legitimate growth and natural change inherent in an urbanization process predicated upon the philosophy of "highest and best use."

Coincident with the zoning concerns stated above, was the public concern over building uses within a purely health orientation. Various health agencies began inspections for compliance under what we now call a housing code. The objective of such regulations is the improvement of living conditions from socio-psychological, as well as sanitary and safety, standards. (6) Where housing codes have been enforced, the above objectives are generally sacrificed on the altar of hardship of owners under existing housing market conditions. (7) Such results are inevitable where the living environmental concerns of the housing code are applied after the structural safety concerns of the building code have been satisfied.

Satisfactory human living conditions were assumed under conventional wisdom, predicated on a laissez faire market philosophy, to have been incorporated into all consumer-acceptable, competitively-priced dwellings. Experience has proved the converse and produced varied legal-administrative responses as solutions, such as combining the functions of building and housing regulations under one administrative body. Although this may be unworkable, (8) logic and experience dictate that unless housing code features are incorporated at the construction stage under building code regulation, and their cost incorporated within the primary mortgage they will be unaffordable by subsequent owners.

Fortunately, the regional model building code formulators and the mobile home industry are finally becoming aware of technological advancements by promulgating and adopting performance code standards and abandoning specification standards, which were unconcerned with and devoid of housing code environmental goals. Recognizing that the private developers were building structures safe against the natural elements, code inspectors can now begin to concentrate their regulatory attentions on the quality of living conditions within the dwellings.

Even though the new standards are oriented toward structural problems, the minimum air temperature, plumbing and electrical guidelines will maintain a living environment more in compliance with existing housing codes. Manufactured modules which conform to the new standards unquestionably satisfy code sanitary requirements by being inherently immune to gnawing rodents and to vermin which infest conventional urban residential structures. With this shift in focus, the overlapping goals of building and housing codes should become recognized and legislative-administrative acts formulated to unite the goals into a solitary effort to provide decent housing.

It is within this context of parochial, separated municipal regulatory activity, devoid of unified goal achievement, that the dilemma of the lower cost house must be considered. No longer is it produceable by conventional methods; no longer are land, financing and promotional costs sufficiently low that new entrepreneurs can enter the competitive market at this price scale. Only by manufacturing methods within the mobile-modular field can such dwellings supply market demands. Quite suprisingly, however, the mobile home is an anomaly in American planning and zoning. It has never been seriously considered in official planning literature or practice, yet, in 1969, 6 million Americans inhabited mobile residences. (9)

APPLICATION OF ZONING: Restriction by Technicality

Zoning ordinance regulation of mobile homes has been most observable as a restriction to sites within trailer camps under special requirements as a conditional use (10) and by total exclusion from any residential district. (11) Where they are permitted

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as residences, their location has been relegated to agricultural or non-urban districts, (12) or to an onerous situs in conjunction with industrial (13) or commercial uses only. (14) The cumulative effect has been to exclude entirely or relegate the mobile home to the worst use areas. (15)

The primary regulatory device of the ordinance is the definition per se. If a dwelling is "a building or part thereof designed or used exclusively for residential purposes" (16) and a building is "any structure designed (or), constructed . . . for the support, enclosure, shelter or protection of persons . . . except a tent or trailer," then a mobile home (i.e., trailer) is not a permitted use in the R-Single-Family Dwelling District of Richmond, Virginia; but, is within regulated trailer camps only. (17) This particular code definition of trailer emphasizes, as so many do, its vehicular design for highway travel, thereby disqualifying it as a structure on the characteristic of permanency of attachment to or on the ground.

To summarize, in defining just what a "dwelling" is for zoning and building purposes, municipal ordinances have consistently placed heavy emphasis upon a structure's residential character (18) as a home, residence, or sleeping place for human beings. However, although a dwelling unit may be a room or group of rooms located within a dwelling which forms a habitable unit for one family, (19) a dwelling for human habitation may not be a house trailer. (20) Another means of exclusion is to relate duration of fixation to site as a determination of dwelling permanency. "Temporary housing is defined as any tent, trailer, mobile home, or any other shelter designed to be transportable and not attached to the ground, to another structure, or to any utility system on the same premises for more than 30 consecutive days." (21) These forms of classification and restriction, enacted without stated reasons, have been enforced perfunctorily under various guises of case precedent.

The Common Law definitional evolution of dwelling has not been free from ambiguity. Any house in which people dwell might be considered a dwelling. (22) However, even though a dwelling has various meanings under the laws of burglary, insurance, homestead, and real property, the predominant distinguishing characteristic appears to be habitability for man. (23)

Davis v. State (24) held that by looking at the outside facts and circumstances, use of a building as a dwelling would make it so. Whereas the character of building occupancy (as a residency for a family or habitation by man) defines dwelling, the purpose for which the dwelling was erected may not always be controlling. (25) However, where a dwelling classification has been made to depend upon more than the fact that it is a building the use of which is habitation for man, such an interpretation has been ruled arbitrary and unreasonable. (26) A dwelling, under an equity interpretation of a deed restriction, was a house possessing the requisite elements for habitability: four walls and a roof. (27) "The interior arrangement within the four walls and under the roof determines whether the same is a 'dwelling house', or what kind of 'house' it is." (28) A structure may be a dwelling house if it is sufficient to permit one family to reside in it through a 6-month winter. (29) An old Wisconsin Supreme Court case (30) construed their homestead statutes to hold that for the property exemption to obtain the owner must in good faith inhabit the commercially leased structure as his residence, habitation or dwelling house. (31)

Within the meaning of an Indiana arson statute, a trailer without wheels resting on cement blocks was not a dwelling house for lack of permanent attachment to the realty. (32) Of greater relevancy was the four man dissent which challenged that conclusion first on the grounds that both burglary and arson statutes have the fundamental concern for preservation and security of home and habitation. Secondly, a more precise reading of dictionary and case definitions emphasize the key elements of occupancy of a building by a family as a place of habitation and residence regardless of the character of the structure. (33) The dissent assembled an impressive array of state cases dealing with a variety of structures, some of which were not permanently affixed to the earth, yet were held to be dwellings. Finally under the facts elicited in testimony, the trailer, as affixed to blocks resting on the earth, possessed all the internal features to make it completely suitable as a dwelling, and was so used when burned.

Under the law of burglary, a dwelling house is an apartment, building or cluster of buildings in which a man, with his family, resides. (34) Thusly, this representative sampling of definitional cases conveys the common thread of intent to and actual occupancy for residency purposes. There are no requirements as to the type of structure or of its permanency, although some support for permanency of occupation is observable. (35)

Although at first glance, the mobile home would seem to fit within the definition of dwelling, the recent decisions which test such meanings reflect a lack of consistency. (36) If a consistency is identifiable it is within the problematic concentrations of permanency of attachment to the realty, duration of location in one place, and mobility.

The case decisions interpreting ordinance definitions are overwhelmingly against permitting residential intrusion of mobile units, as exemplified in a 1970 case. (37) There have been decisions to the contrary based upon inadequately drawn ordinance definitions (38) which do not specifically exclude trailers. (39) Once permanently immobilized, a unit may conform to the dwelling terminology. (40) And, owners who affix the home to the property with the intent to use it for residential purposes have been held to comply with the previously identified common law definitions. (41) However, intent, occupancy, and suitability as habitation may be disregarded in favor of an overriding concern with the physical facts about a building justifying its exclusion. (42)

When trailer usage is segregated into designated parks, utilization of one as a separate unit or as a component part of a building, regardless of suitability for living within a residential zone, is a punishable offense. (43) The dissenting opinion, herein, was more discerning than the majority concerning the issue of whether a structure built off the site was a residential dwelling. Considering the necessities of life, so long as job opportunities are locally obtainable, the intent to maintain a mobile home permanently affixed should be controlling. The interdependency of maintaining a residence and retention of gainful employment were clearly recognized. Permanency of residence was further identified with mode of taxation. Finally, as long as a mobile unit was as much a functioning residence as a conventional house rolled onto a site, and it conformed to local residential regulation, its manner and place of construction were insufficient criteria on which to exclude it from residentially zoned districts. The manufactured unit was entitled to the same regulation and protection afforded to other dwellings. Anything less would constitute illegal arbitrary actions.

Fortunately, the overwhelming uninformed legal fixation of equating transient or temporary living with off-site produced housing is being whittled away, (see the Sioux Falls, Lescault, In re Willey, Morin and Crawford cases noted above) by the realization that any permanent residence, regardless of construction, can be moved from its foundation to another location. (44)

In a retrospective review of these decisions which conflict over interpretations of seemingly uncomplicated terms, it becomes clear that the courts seldom delve into the explicit and implicit reasons for legislative classification and segregation. The mechanical restatements of precedent are applied without much analysis and the pronouncements are more provoking for their unspoken policy presumptions than for their gymnastics with facts and ordinances in order to produce denials of use. Unfortunately a degree of ignorance and hearsay perpetuate these policy presumptions, and the Bench and Bar have been as uninformed as the legislatures. To complete the understanding of the restrictive legal decisions, several factual studies will be explored to indicate the fallacies in and refutability of the underlying presumptions.

Mobile homes are inhabited by lower-class peoples, who are striving to move up on the economic scale and, therefore, have no community concern or any permanency. One study's set of statistics disputed this by showing that over 60 per cent of mobile home dwellers were engaged in some manual or blue-collar work, (45) while another study reported that within the predominant manual employee-occupant group there were included a substantial percentage of skilled and semi-skilled tradesmen. (46) A survey in New England (47) indicated that mobile homes were used by a cross section of moderate income households. Almost a fifth of the occupants were young married couples and another fifth were

older or retired couples. This same survey indicated that economic segregation of what many town residents felt was a lower income group was one motivation behind some zoning and subdivision regulations excluding the mobile home. (48)

Disregarding for a moment the facts which contradict the inferior income fallacy, should mobile home occupants create a slum with their allegedly inferior life styles, a depreciated mobile unit would be easier to remove by either public or private action than a dilapidated conventionally-built structure.

The presence of a mobile home has an adverse effect upon residential property values. As an appraiser's maxim this statement would be true regardless of where a house were built if the new dwelling has a significantly lower value than all surrounding properties. This is also true where there is a great disparity in appearance between the new and existing structures, whether the former is an ultra-modern conventionally-built or an all-aluminum clad mobile home. But, this is a surface or cosmetic feature of the transportable dwelling which has been corrected by most major manufacturers. Bair has maintained that there is no valid planning or economic basis for exclusion where standards of appearance have been met. (49)

Mobile home residents do not carry their fair share of the local tax burden. This allegation is not maintainable, either, when it is realized that the young married and over-55 age group occupants, 40 per cent of the mobile dwelling occupants as previously identified, do not add to the burden of the school districts with school-aged children. And, as more jurisdictions decide that mobile units are permanent affixations to the realty, they become taxed as real property either by statute or court decree, (50) thereby supporting municipal services. Equitable real property taxation is realized in mobile home parks and subdivision zones also, because taxes are included in the lot rental fee.

RECOMMENDED LEGISLATIVE CHANGES

Clearly, the manufactured off-site dwelling, characterized as a mobile or modular home, satisfies or can satisfy legal and contemporary definitions--standards of suitability for habitation. The unstated policy presumptions underlying official restrictions on such dwellings are not justifiable, as new socio-economic research indicates. How then, in light of the present housing crisis and the long-term national housing goals, can zoning ordinances be corrected to permit an equal treatment of these homes?

The most logical first step would be to factually demonstrate to the unconcerned municipal officials that the current factory-built house is a dwelling, just as suitable and safely habitable as conventionally-built dwellings within their jurisdictions. A policy statement, in the form of a purpose clause, should be incorporated into the zoning ordinance to that effect. Further, municipal acceptance of environmentally-sound housing, from the building and housing code objectives, would dictate that it become official policy to separate transportable dwellings from transient trailers and vacation campers. The latter vehicles, defined by their usability independent from municipal utilities, should be relegated to locations within designated parks only.

Such a distinction, formulated to overcome misconceptions about legislative intent, sets the stage for the deletion within relevant ordinance sections of restrictions against homes of a mobile nature. Establishing a definitional distinction between types of manufactured units would foster more legal precision among legislators, lawyers and administrators. It is an unfortunate fact that in the cases analyzed for this study, the term "trailer," with all of the explicit evil connotations from the '30's and '40's, was used when referring to a permanently immobilized 1970 dwelling.

Definitions within the ordinance should be redrafted to exclude arbitrary restrictions against mobile homes as dwellings and against buildings not possessing load-bearing exterior walls. Dwelling should be written so as to include ready-for-human-occupancy, off-site manufactured units, which are intended to be securely affixed to a foundation and, which are dependent for occupational use upon connection to public utilities. Minimum floor areas and exterior finishes might be designated, also. Duration of permanent attachment may not be a necessary requirement in view of the cost of affixation and the potential movability of even conventional housing. The terms manufactured or modular house should be defined to mean units which, as delivered from a factory or other assembly point, contain completely installed electrical, plumbing, and temperature control equipment. Permanent affixation should be described with the primary significance placed upon the owner's intention to make the dwelling stationary on some kind of stable foundation by the removal of transport mechanisms.

In conjunction with such definitional improvements, modifications should be made in the residential zone sections of the ordinance. Permitted uses should include the transportable dwelling. Lot size and yard requirement site standards should be flexibly adjustable to modular dimensions. Minimum dwelling unit standards on interior floor area might be reduced to reflect the moderate needs of child-less single and young or older couples. External architectural standards might be established with reference to existing municipal architectural trends or designs. Lot coverage and floor area ratios should be adjustable accordingly. In other respects, the modular dwelling would comply with other general residential regulations, such as on height and off-street parking.

The cumulative effect of these first steps in ordinance revision would be to make it legally difficult for municipal officials to more restrictively interpret the zoning law against permitted dwellings. Their guiding public policy would be a forthright promotion of new decent housing which incorporates technological advancements for the greater general welfare. If there is to be a restriction, it must be predicated upon a factual determination that the manufactured home is unfit for permanent residential use. Only after this point has been established can it be maintained that public regulation of a transportable dwelling is reasonable. Since this issue of reasonableness involves the definition of dwelling for human habitation, only objectionable and substandard units would be excluded under the suggested ordinance revisions. In this way, the challenge of meeting the existing lower-cost housing demand might be made somewhat less overwhelming.

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